

# SENATE BILL No. 371

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-7-2-128.5; IC 12-15.

**Synopsis:** Medicaid liens and nonprobate assets. Authorizes the office of Medicaid policy and planning to: (1) place a lien on a Medicaid recipient's real property if the office determines that the recipient will not return to live in the property; and (2) enforce the lien if the property is sold or upon the death of the recipient. Provides certain exemptions. Permits the office to recover from a deceased Medicaid recipient nonprobate assets in which the recipient has an interest at death but that do not pass through the probate estate.

**Effective:** July 1, 2002; January 1, 2003.

**Miller**

January 10, 2002, read first time and referred to Committee on Judiciary.

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 371

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 12-7-2-128.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JANUARY 1, 2003]: **Sec. 128.5. "Medical institution",**  
4 **for purposes of IC 12-15-8.5, has the meaning set forth in**  
5 **IC 12-15-8.5-1.**

6 SECTION 2. IC 12-15-8.5 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
8 JANUARY 1, 2003]:

9 **Chapter 8.5. Liens on Real Property of Medicaid Recipients**

10 **Sec. 1. As used in this chapter, "medical institution " means any**  
11 **of the following:**

12 **(1) A hospital.**

13 **(2) A nursing facility.**

14 **(3) An intermediate care facility for the mentally retarded.**

15 **Sec. 2. When the office, in accordance with 42 U.S.C. 1396p,**  
16 **determines that a Medicaid recipient who resides in a medical**  
17 **institution cannot reasonably be expected to be discharged from a**



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1 medical institution and return home, the office shall obtain a lien  
 2 on the Medicaid recipient's real property for the cost of all  
 3 Medicaid expenditures made on behalf of the recipient.

4 **Sec. 3.** The office may not obtain a lien under this chapter if any  
 5 of the following persons lawfully reside in the home of the  
 6 Medicaid recipient who resides in the medical institution:

7 (1) The Medicaid recipient's spouse.

8 (2) The Medicaid recipient's child who is:

9 (A) less than twenty-one (21) years of age; or

10 (B) disabled as defined by the federal Supplemental  
 11 Security Income program.

12 (3) The Medicaid recipient's sibling who has an ownership  
 13 interest in the home and who has lived in the home  
 14 continuously beginning at least twelve (12) months before the  
 15 recipient was admitted to the medical institution.

16 **Sec. 4.** Before obtaining a lien on a Medicaid recipient's real  
 17 property under this chapter, the office shall notify in writing the  
 18 Medicaid recipient, the Medicaid recipient's guardian, the  
 19 Medicaid recipient's attorney in fact, or the Medicaid recipient's  
 20 authorized representative, of the following:

21 (1) The office's determination that the Medicaid recipient  
 22 cannot reasonably be expected to be discharged from the  
 23 medical institution.

24 (2) The office's intent to impose a lien on the Medicaid  
 25 recipient's home.

26 (3) The Medicaid recipient's right to a hearing under  
 27 IC 12-15-28 upon the Medicaid recipient's request regarding  
 28 whether the requirements for the imposition of a lien are  
 29 satisfied.

30 **Sec. 5.** (a) The office shall obtain a lien under this chapter by  
 31 filing a notice of lien with the recorder of the county in which the  
 32 real property subject to the lien is located. The notice shall include  
 33 the following:

34 (1) The name and place of residence of the individual against  
 35 whose property the lien is asserted.

36 (2) A legal description of the real property subject to the lien.

37 (b) Upon the office's request, the county auditor or assessor of  
 38 a county shall furnish the office with the legal description of any  
 39 property in the county registered to the recipient.

40 (c) The office shall file one (1) copy of the notice of lien with the  
 41 county office of family and children in the county in which the real  
 42 property is located. The county office of family and children shall

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1 retain a copy of the notice with the county office's records.

2 (d) The office shall provide one (1) copy of the notice of lien to  
3 the recipient whose real property is affected.

4 Sec. 6. (a) Beginning on the date on which a notice of lien is  
5 recorded in the office of the county recorder under section 5 of this  
6 chapter, the notice of lien:

- 7 (1) constitutes due notice of a lien against the Medicaid  
8 recipient's real property for any amount then recoverable and  
9 any amount that becomes recoverable under this article; and  
10 (2) gives a specific lien in favor of the office.

11 (b) The lien continues from the date of filing the lien until the  
12 lien is satisfied or released.

13 Sec. 7. The office may bring proceedings in foreclosure on a lien  
14 arising under this chapter during the lifetime of the Medicaid  
15 recipient if the Medicaid recipient or a person acting on behalf of  
16 the Medicaid recipient sells the property.

17 Sec. 8. (a) The office may not enforce a lien under this chapter  
18 if the Medicaid recipient is survived by any of the following:

- 19 (1) The recipient's spouse.  
20 (2) The recipient's child who is:  
21 (A) less than twenty-one (21) years of age; or  
22 (B) disabled as defined by the federal Supplemental  
23 Security Income program.

24 (b) The office may not enforce a lien under this chapter as long  
25 as any of the following individuals reside in the home:

- 26 (1) The recipient's child of any age if the child:  
27 (A) resided in the home for at least twenty-four (24)  
28 months before the Medicaid recipient was admitted to the  
29 medical institution;  
30 (B) provided care to the Medicaid recipient that delayed  
31 the Medicaid recipient's admission to the medical  
32 institution; and  
33 (C) has resided in the home on a continuous basis since the  
34 date of the individual's admission to the medical  
35 institution.

- 36 (2) The Medicaid recipient's sibling who has an ownership  
37 interest in the home and who has lived in the home  
38 continuously beginning at least twelve (12) months before the  
39 Medicaid recipient was admitted to the medical institution.

40 Sec. 9. (a) The office shall release a lien imposed under this  
41 chapter within ten (10) business days after the county office of  
42 family and children receives notice that the Medicaid recipient:

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1           **(1) was discharged from the medical institution; and**

2           **(2) is living in the home.**

3           **(b) The county recorder shall waive the filing fee for the filing**  
4           **of a release made under this section.**

5           SECTION 3. IC 12-15-9-0.5 IS AMENDED TO READ AS  
6           FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 0.5. As used in this  
7           chapter, "estate" includes:

8           **(1) all real and personal property and other assets included within**  
9           **an individual's probate estate; and**

10           **(2) any other real and personal property and other assets in**  
11           **which the individual had legal title or an interest at the time**  
12           **of death, including assets conveyed to a survivor, heir, or**  
13           **assign of the deceased individual through any of the following:**

14           **(A) Joint tenancy.**

15           **(B) Tenancy in common.**

16           **(C) Survivorship.**

17           **(D) Life estate.**

18           **(E) Trust.**

19           **(F) Any other arrangement.**

20           SECTION 4. IC 12-15-28-1 IS AMENDED TO READ AS  
21           FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. An applicant  
22           for or a recipient of Medicaid may appeal to the office if one (1) of the  
23           following occurs:

24           **(1) An application or a request is not acted upon by the county**  
25           **office within a reasonable time after the application or request is**  
26           **filed.**

27           **(2) The application is denied.**

28           **(3) The applicant or recipient is dissatisfied with the action of the**  
29           **county office.**

30           **(4) The recipient is dissatisfied with a determination made by**  
31           **the office under IC 12-15-8.5.**

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